

AF/1700

TRANSMITTAL LETTER
(General - Patent Pending)

Docket No.
112703-090

In Re Application Of: Richey et al.

OCT 20 2003

Filing Date

May 22, 2001

Examiner

A. Corbin

Group Art Unit

1761

Title:

COATED CHEWING GUM AND METHOD FOR MAKING SAME

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**Response to Office Action (3 pages);
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Dated: October 17, 2003

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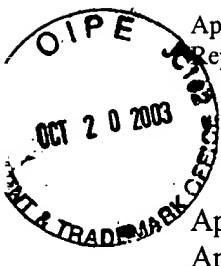


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Appl. No. 09/681,692
Reply to Office Action of July 17, 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Richey et al.
Appl. No.: 09/681,692
Filed: May 22, 2001
Title: COATED CHEWING GUM AND METHOD FOR MAKING SAME
Art Unit: 1761
Examiner: A. Corbin
Docket No.: 112703-090
Conf. No.: 5308

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RESPONSE TO OFFICE ACTION

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Sir:

This Response is submitted in response to the Office Action dated July 17, 2003.

REMARKS

This Response is submitted in response to the Office Action mailed on July 17, 2003. The Office Action rejects Claims 1-36 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,536,511 ("*Yatka*") in view of U.S. Patent No. 5,336,509 ("*McGrew*").

In the Office Action, Claims 1-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yatka* in view of *McGrew*. Applicants believe this rejection is improper and should be withdrawn.

The present invention is directed to a coated chewing gum product comprising a gum center that includes a water soluble portion and a water insoluble portion. The water insoluble portion comprises at least 50% by weight of the gum center and the gum center includes less than 5% by weight of bulk sweeteners. The product also includes a coating that at least substantially surrounds the gum center. The present invention is also directed to novel methods of using the coated chewing gum product. The invention further provides a coated chewing gum product comprising a gum center that includes a water insoluble portion. The water insoluble portion comprises at least 50% by weight of the gum center and the gum center includes less than 5% by weight of bulk sweeteners.

Yatka is directed to a chewing gum product which includes a gum pellet covered by a hard coating containing erythritol and xylitol. Contrary to the Examiner's assertion the chewing gum product of *Yatka* includes an insoluble gum base which comprises waxes. See Col. 4, lines 53-57. Indeed, commonly employed waxes disclosed in *Yatka* include paraffin, microcrystalline and natural waxes among others. See Col. 4, lines 66-67. As admitted by the Examiner, *Yatka* does not disclose or suggest a composition which includes less than 5% of bulk sweetener. See Office Action at 2.

In contrast, *McGrew* is primarily directed to a wax-free low calorie, high base chewing gum. Applicants acknowledge that *McGrew* does disclose reducing the bulking agent in a wax-free chewing gum composition. However, Applicants do not agree that *McGrew* is properly combinable with *Yatka*.

McGrew goes into great detail about the disadvantages and negative consequences of using wax in a gum base. See Col. 1, lines 23-29. Applicants submit that insofar as *McGrew* is solely directed to wax-free chewing gum compositions it clearly constitutes a teaching away from *Yatka* which as mentioned above includes a number of waxes as preferred components in the chewing gum base.

With respect to the Patent Office's statement that none of *Yatka*'s examples include why Applicants respectfully submit that this is not supported by the record. *Yatka* discloses in the examples that the center includes a base portion. What is in the base portion is not disclosed. The base is where the wax would be. Thus, the examples may or may not include wax. Indeed, based on the remaining disclosure, it most likely does.

There simply is no basis for one skilled in the art to combine these references since the teachings are in such conflict with one another. That is the point of the issue vis-à-vis wax. Regardless of Applicants' claims, the question is the motivation to combine the references. Here, there simply is not one in view of conflicting teachings.

Therefore, Applicants respectfully request that the obviousness rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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